

REMARKS

This Response is submitted in response to the Office Action mailed on May 20, 2003.

Claims 8-23 are pending. The Office Action rejects Claims 8-23 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,536,511 ("*Yakta*"). In addition, Claims 8-23 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,303,159 ("*Barkalow*"). Claims 8-23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Barkalow* in view of U.S. Patent No. 3,984,574 ("*Comollo*"). Claims 8-11, 14-18 and 21-23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,578,336 ("*Monte*"). Claims 12, 13, 19 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Monte* in view of *Yakta*. Applicants respectfully submit that all of the above-mentioned rejections have been overcome or are improper for reasons set forth below.

In the Office Action Claims 8-23 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Yakta*. Applicants submit this rejection is in error.

The present invention comprises a gum product having a chewable water insoluble center and a coating that surrounds the center. The coating includes a medicament and comprises at least 50% by weight of the product.

Yakta relates to a chewing gum product comprising a gum pellet covered by a hard coating containing erythritol and xylitol. The Patent Office admits that *Yakta* does not teach the use of medicament in the coating composition. See Office Action at 3. Instead, the Examiner states that *Yakta* teaches the use of calcium carbonate, magnesium carbonate, and talc, which are well known minerals in the pharmaceutical art. According to the Examiner, such language suggests the use of medicament in the coating since Applicants' Claims 9 and 16 recited "minerals" as one of many medicaments that could be used in the coating.

Applicants have amended Claims 9 and 16 to remove the term "minerals." However, Applicants respectfully submit that the use of calcium carbonate, magnesium carbonate, and talc as disclosed in *Yakta* is absolutely unrelated to medicaments. Medicament, as used by Applicants, refers to a medicine or an agent that achieves a desired effect in a consumer of the

product. *Yakta* uses calcium carbonate, magnesium carbonate, and talc as panning modifiers. See Col. 4, lines 25-32. Panning modifiers act to stabilize the coating composition and improve its quality. The use of calcium carbonate, magnesium carbonate, and talc as medicaments, as defined above, is nowhere suggested in this reference. Because *Yakta* does not disclose a coating have medicaments, Applicants believe that *Yakta* fails to anticipate the claimed invention.

In the Office Action Claims 8-23 are rejected under 35 U.S.C. § 102(e) as being anticipated by *Barkalow*. Applicants submit this rejection is in error.

Barkalow relates to a method of coating gum comprising applying a first coating, a powder material and a second coating to the gum center. The coatings are syrups related to bulk sweeteners. The Patent Office admits that *Barkalow* does not teach the use of medicament in the coating composition. See Office Action at 4. Instead, the Examiner states that *Barkalow* teaches the use of calcium carbonate, magnesium carbonate, and talc, which are well known minerals in the pharmaceutical art. According to the Examiner, such language suggests the use of medicament in the coating since Applicants' Claims 9 and 16 recited "minerals" as medicament that can be used in the coating.

As discussed previously, Applicants have amended Claims 9 and 16 to remove the term "minerals." However, Applicants once again submit that the use of calcium carbonate, magnesium carbonate, and talc as disclosed in *Barkalow* is completely unrelated to medicaments. Medicament, as used by Applicants, refers to a medicine or an agent that achieves a desired effect in a consumer of the product. *Barkalow* uses calcium carbonate, magnesium carbonate, and talc as panning modifiers. See Col. 3, lines 3-9. Panning modifiers act to stabilize the coating composition and improve its quality. The use of calcium carbonate, magnesium carbonate, and talc as medicaments is nowhere suggested in these references. Because *Barkalow* does not disclose a coating have medicaments, Applicants believe that *Barkalow* also fails to anticipate the claimed invention.

In the Office Action Claims 8-23 are rejected under 35 U.S.C §103(a) as being obvious over *Barkalow* in view of *Comollo*. Applicants hereby state that the *Barkalow* reference was at the time the invention was made, subject to an obligation of assignment to the same entity,

namely the Wm. Wrigley Jr. Company. Therefore, as stated by the Patent Office and in accordance with MPEP §706.02(l)(1), Applicants respectfully submit this reference is not available as prior art under 35 U.S.C. §103(a). Moreover, *Comollo* does not disclose or suggest all of the features of the claimed invention. As discussed above, calcium carbonate, talc and tricalcium phosphate are minerals and not a medicament within the scope of the present invention. Even accepting, *arguendo*, the Examiner's position that calcium carbonate, talc and tricalcium phosphate would suggest a medicament, these minerals are only used in formulating the gum base and not the coating. See Col. 3, lines 65-68. As such, they clearly teach away from the present invention which requires a medicament in the coating. Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Claims 8-11, 14-18 and 21-23 are rejected under 35 U.S.C § 103(a) as being unpatentable over *Monte*. In addition, Claims 12, 13, 19 and 20 are rejected under 35 U.S.C § 103(a) as being unpatentable over *Monte* in view of *Yatka*. Applicants traverse these rejections and request reconsideration of same.

Monte discloses a soft candy/gum center coated with at least a discrete intermediate sealing layer and outer vitamin layer. See Col. 2, lines 44-52. The purpose of the intermediate layer is to sealingly separate the vitamin layer from the moisture in the candy center composition. Id.

As previously discussed, the present invention provides a coated chewing gum composition including a gum center. A coating having a medicament substantially surrounds the gum center and comprises at least 50% by weight of the chewing gum product. In the present invention, the coating having the medicament or agent directly contacts the gum center. Contrary to the Examiner's position, there is no motivation or suggestion within *Monte* to have the medicament or vitamin layer in direct contact with the gum center. Indeed, insofar as *Monte* only teaches an intermediate sealing layer between the gum/candy center and the vitamin layer, it clearly constitutes a teaching away from the instant invention which discloses the medicament within the coating directly contacting the gum center composition.

Yatka fails to remedy the deficiencies of *Monte* on several fronts. *Yatka* merely relates to a chewing gum product comprising a gum pellet covered by a hard coating. As mentioned before, *Yatka* does not disclose a coating having a medicament. Rather, *Yatka* is mainly concerned with the gum coating having an artificial sweetener. As a result, a person of ordinary skill in the art would not be inclined to modify *Monte* in view of *Yatka* to arrive at the claimed invention. Therefore, even if combinable, the cited references fail to render obvious the claimed invention.

In ascertaining the appropriateness of a particular reference as the basis for a rejection under §103, a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303 (Fed. Cir. 1983), *cert denied*, 469 U.S. 851 (1984). Accordingly, Applicants respectfully submit that these rejections have been overcome and request withdrawal of same.

For the foregoing reasons, Applicants respectfully request reconsideration of their patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

August 19, 2003

BY 

Robert M. Barrett
Reg. No. 30,142
P.O. Box 1135
Chicago, Illinois 60690-1135
Phone: (312) 807-4204